



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0902]

RIN 1625-AA00

Safety Zone; Alliance Road Bridge Demolition; Black Warrior River, Locust Fork; Birmingham, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of the Locust Fork to the Black Warrior River, Birmingham, AL. This action is necessary for the protection of persons and vessels on navigable waters during the demolition of the Alliance Road Bridge (Co. Rd. 61). Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective with actual notice from October 10, 2012 through November 30, 2012. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0902. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Lenell J. Carson, Sector Mobile, Waterways Division, U.S. Coast Guard; telephone 251-441-5940, e-mail Lenell.J.Carson@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard received notification on September 11, 2012 from R.R. Dawson Bridge Company LLC of their intentions to start the process to demolish the Alliance Road Bridge on September 24, 2012. Publishing a NPRM is impracticable because it would unnecessarily delay the required safety zone's effective date. The safety zone is needed to protect persons and vessels from safety hazards associated with the demolition of the Alliance Road Bridge. Additionally, delaying the safety zone for the NPRM process would unnecessarily interfere with the demolition and its possible commercial and contractual obligations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date to provide a full 30 day notice is impracticable because immediate action

is needed to protect persons and vessels from safety hazards associated with the demolition of the Alliance Road Bridge.

B. Basis and Purpose

R.R. Dawson Bridge Company LLC is under contract with the Alabama Department of Transportation to demolish the Alliance Road Bridge (Co. Rd. 61), which crosses the Locust Fork of the Black Warrior River, a navigable waterway. The demolition poses significant safety hazards to persons and vessels on the Locust Fork. The COTP Mobile is establishing a temporary safety zone for a portion of the Locust Fork to the Black Warrior River, Birmingham, AL, to protect persons and vessels during the demolition of the Alliance Road Bridge. The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone

for a portion of the Locust Fork to the Black Warrior River, Birmingham, AL to include all waters between river mile 392 and river mile 393. This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at 251-441-5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the safety zone. This rule is effective from October 10, 2012 through November 30, 2012.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The safety zone listed in this rule will restrict vessel traffic from entering, transiting or anchoring in a small portion of the Locust Fork to the Black Warrior River, Birmingham, AL. The effect of this regulation will not be significant for several reasons: 1) this rule will only affect vessel traffic for a short duration; 2) vessels may request permission from the COTP to transit through the safety zone; and 3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

2. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the affected portions of the Locust

Fork to the Black Warrior River during the demolition of the Alliance Road Bridge. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects

of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on a waterway during the demolition of the Alliance Road Bridge and is not expected to result in any significant adverse

environmental impact as described in NEPA. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a categorical exclusion determination will be made available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0902 to read as follows:

§ 165.T08-0902 Safety Zone; Alliance Road Bridge Demolition;
Black Warrior River, Locust Fork; Birmingham, AL.

(a) Location. The following area is a safety zone: a portion of the Locust Fork to the Black Warrior River, Birmingham, AL to include all waters between river mile 392 and river mile 393.

(b) Effective dates. This rule is effective and enforceable with actual notice from October 10, 2012 through November 30, 2012.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

(d) Informational Broadcasts. The Captain of the Port or a designated representative will inform the public

through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: October 10, 2012

D. J. ROSE,
Captain, U.S. Coast Guard
Captain of the Port Mobile

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